IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEL NO.691 OF 2004
IN
CIVIL MISC. APPEAL NO. 2144 OF 2003

WITH
CIVIL APPLICATION NO. 1898 OF 2004

WITH
LETTERS PATENT APPEAL NO. 692 OF 2004
IN

CIVIL MISC. APPLICATION NO.2143 OF 2003
WITH
CIVIL APPLICATION NO. 1899 OF 2004

WITH
LETTERS PATENT APPEAL NO.1069 OF 2004
IN
CIVIL MISC. APPLICATION NO. 2149 OF 2003

WITH
CIVIL APPLICATION NO. 3056 OF 2004

WITH
LETTERS PATENT APPEAL NO. 1070 OF 2004
IN
CIVIL MISC. APPLICATION NO. 2147 OF 2003
WITH
CIVIL APPLICATION NO. 1903 OF 2004

WITH
LETTERS PATENT APPEAL NO 1071 OF 2004
IN
MISC.CIVIL APPLICATION NO. 2146 of 2003
WITH
CIVIL APPLICATION NO. 1901 OF 2004

WITH
LETTERS PATENT APPEAL NO.1072 OF 2004
IN CIVIL MISC. APPLICATION NO. 2148 OF 2003
WITH
CIVIL APPLICATION NO. 1910 OF 2004

WITH
LETTERS PATENT APPEAL NO. 1073 OF 2004

IN
CIVIL MISC. APPEAL NO.2150 OF 2003
WITH
CIVIL APPLICAITON NO. 1907 of 2004

WITH
LETTERS PATENT APPEAL NO. 1074 OF 2004
IN
CIVIL MISC. APPLICATION NO. 2144 OF 2003
WITH
CIVIL APPLICATION NO. 1909 OF 2004

WITH
LETTERS PATENT APPEAL NO. 1075 OF 2004
IN
CIVIL MISC. APPLICATION NO. 2143 OF 2003

WITH
CIVIL APPLICATION NO. 1913 OF 2004

WITH
LETTERS PATENT APPEAL NO. 1076 OF 2004
IN
CIVIL MISC. APPLICATION NO. 2149 OF 2003

WITH
CIVIL APPLICATION NO. 1905 OF 2004

WITH

LETTERS PATENT APPEAL NO. 1077 OF 2004

IN

CIVIL MISC. APPLICATION NO. 2147 OF 2003

WITH
CIVIL APPLICATION NO. 3066 OF 2004

WITH
LETTERS PATENT APPEAL NO. 1079 OF 2004
IN
CIVIL MISC. APPLICATION NO. 214 OF 2003
WITH
CIVIL APPLICATION NO. 3068 OF 2004

WITH

LETTERS PATENT APPEAL NO. 1080 OF 2004
IN
CIVIL MISC. APPLICATION NO.2150 OF 2003

WITH
CIVIL APPLICATION NO. 3070 OF 2004

WITH
LETTERS PATENT APPEAL NO. 1081 OF 2004
IN
CIVIL MISC. APPLICATION NO.2148 OF 2003
WITH
CIVIL APPLICATION NO. 3071 OF 2004

WITH
LETTERS PATENT APPEAL NO. 1082 OF 2004
IN
CIVIL MISC. APPLICATION NO.2146 OF 2003

WITH

CIVIL APPLICATION NO. 3072 OF 2004

For Approval and Signature:

HON'BLE DR.JUSTICE J.N.BHATT
and
HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

BHAGWANBHAI SHANKARBHAI PATEL

Appearance:

1. L.P.A. NOS.691 & 692 of 2004
MS. SEJAL K. MANDAVIA for the appellant
MS. HARSHA DEVANI, ASSTT. GOVT. PLEADER
for respondents.

2. L.P.A. NOS. 1069, 1077, 1069, 1080, 1081
AND 1082 OF 2004
MR MP PRAJAPATI for appellants.
MS HARSHA DEVANI, ASSTT. GOVT. PLEADER

3. L.P.A. NOS. 1070, 1071, 1072, 1073, 1074
1075 AND 1076 of 2004
MR HARSHA DEVANI, AGP WITH MR AD OZA GP
IN ALL ALL L.P.AS.
MR IS SUPEHIA FOR the respondents.

CORAM : HON'BLE DR.JUSTICE J.N.BHATT
and
HON'BLE MR.JUSTICE D.N.PATEL

Date of decision:14/10/2004

C.A.V. JUDGMENT

(Per : HON'BLE MR.JUSTICE D.N.PATEL)

1. The aforesaid Letters Patent Appeals have been preferred by the State of Gujarat, District Primary Education Officer, Mehsana District Committee and District Panchayat through the District Primary Education Officer, Bharuch, whereby the judgment and order passed in Special Civil Application Nos. 8871 and 8872 of 1999 and 1093 and 10668 of 2000 and 2853, 2865 and 5853 of 2000 on 19-12-2001 as well as the order passed by the learned Single Judge in in Review Petitions dated 24-11-2003 are challenged.

2. Learned advocate appearing for the appellants and the applicants of Review Applications mainly submitted that the judgment delivered by the learned Single Judge in the aforesaid petitions on 19-12-2001 was challenged in in L.P.A. wherein the Government Resolution dated 16-10-2003 was pointed out to the Bench of Letters Patent Appeal. As the GR dated 16-10-2003 was not pointed out by the learned advocates for petitioners before the learned Single Judge, earlier Division Bench of Letters Patent Appeal while disposing of those Letters Patent

Appeals directed the appellants to prefer Review Applications before the learned Single Judge and therefore Civil Misc. Applications (Review Applications) were preferred before the learned Single Judge and thereafter all Review Applications were dismissed by the learned Single Judge vide order dated 24-11-2003 and therefore aforesaid Letters Patent Appeals have been preferred against both the judgments and orders of the learned Single Judge i.e. against the judgment dated 19-12-2001 as well as against the judgment date 24-11-2003 passed in the writ petitions and Review Applications respectively.

3. Main contention raised by the learned advocates appearing on behalf of the appellants in these Letters Patent Appeals, is whether the Primary Teachers who were given Selection Grade were entitled to the benefit of Senior Scale or Higher Grade Scale. It is pointed out by the learned advocate for the appellants that vide Government Resolution dated 5-7-1991 an option was given to the original petitioners to continue in Senior Scale or to opt for grant of Higher Grade Scale as per Clause XV of Government Resolution dated 5-7-1991. Subsequently, it was brought to the notice of the Government of Gujarat that there are certain primary teachers who were given Selection Grade in pursuance of the Notification NO. 16-9-1976 issued u/s 20(3) of the Bombay Primary Education Act. Therefore, the Government of Gujarat issued another clarification / amendments vide Government Resolution dated 16-10-1993 wherein in Clause-VIII clarified that the Selection Grade given to the primary teachers shall also be treated as promotion and therefore the primary teachers who had already obtained Selection Grade shall also be governed by Clause XV of Government Resolution dated 5-7-1991. Therefore, the original petitioners who were getting Selection Grade shall not get benefit of Higher Grade Scale as per Clause XV of Government Resolution dated 5-7-1991. In short, though Clause XV of Government Resolution dated 5-7-1991 uses the words "Senior Scale" only, but now the words "Selection Grade" are included therein, as per the clarificatary/amended Resolution issued by the Government of Gujarat on 16-10-1993. Thus, the petitioners if wanted to get benefit of Higher Grade Scale they will not be entitled to get Senior Scale as well as Selection Grade. This aspect of the matter has also not been appreciated by the learned Single Judge while passing the order dated 19-12-2001 in the aforesaid group of Special Civil Applications as well as the order dated 24-11-2003 passed in the said Review Petitions.

4. It was also contended by the learned advocates for the appellants that the Government has all powers, authority and jurisdiction to clarify, rectify and amend the Government Resolutions issued by it. Though the words "Selection Grade" were not used in Clause - XV of the GR dated 5-7-1991, the same can be included in Clause-XV by clarifying or amending the resolution dated 16-10-1993 (corrected vide Clause - VIII of GR dated 16-10-1993). This aspect of the matter has not been appreciated by the learned Single Judge especially while passing the order dated 24-11-2003 in Review Petitions and hence the order passed by the learned Single Judge in the group of aforesaid petition deserves to be quashed and set aside.

5. Learned advocate appearing for the Primary Teachers contended that the Government has no power, jurisdiction and authority to amend the Government Resolution especially Clause - XV of GR dated 5-7-1991 by mere clarificatory/amended resolution dated 16-10-2003) so as to add the words "Selection Grade" in Clause -XV of the resolution dated 5-7-1991. Original Clause-XV, uses the words "Senior Scale" only. There were no such words like "Selection Grade" in Clause-XV. It was also contended by the learned advocate for the Primary Teachers that the "Selection Grade" is absolutely different connotation than that of "Senior Scale" and both are not the same. The criteria for getting "Senior Scale" is purely on the length of service whereas the criteria for getting "Selection Grade" is length of service as well as selection of the employee. Therefore option was given vide resolution dated 5-7-1991 to the primary teachers keeping, other benefits intact (like benefit of Selection Grade) either to continue Senior Scale or to opt for Higher Grade Scale vide Clause - XV of GR dated 5-7-1991. This scheme was introduced because Senior Scale and Higher Grade Scale has something to do with the length of service only. To avoid the problem of stagnation in the same cadre for number of years, without getting promotion, is psychologically not correct position and therefore the concept of Senior Scale was originally introduced. Subsequently, the scheme of Senior Scale was brought to an end and the scheme of Higher Grade Scale was introduced and therefore vide Clauses XIV and XV of GR dated 5-7-1991 a choice was given to the teachers either to continue in Senior Scale or to opt for Higher Grade Scale. It was contended by the learned advocate for the Primary Teachers that after giving option by the Primary Teachers to opt Higher Grade Scale, in September, 1991 the Government has wrongly insisted to surrender the benefit by which the Primary

Teachers were getting under Selection Grade on the basis of Clause - VIII of the Resolution dated 16-10-1993 and the Government is under wrong belief that Selection Grade is also included in Clause XV of GR dated 5-7-1991. Selection Grade is absolutely different than that of Senior Scale. Senior Scale and Higher Grade Scale are absolutely dependant upon length of service of particular years. No sooner did the employee completes certain years of service in the relevant scale, he will be automatically be entitled, to get Senior Scale or Higher Grade Scale. Whereas so far Selection Grade is concerned, as per GR dated 16-9-1976 issued by the Education Department there was an element of selection after completion of 15 years of service and therefore rightly, correctly and properly the words "Selection Grade" were not included originally in Clause - XV of GR dated 5-7-1991 and therefore the order passed by the learned Single Judge in the original petitions as well as in the review petitions dated 19-12-2001 and 24-11-2003 respectively are true and correct and also in consonance with law and require no interference by the Letters Patent Appeal Bench and hence the aforesaid Letters Patent Appeals may kindly be dismissed.

6. We have heard the learned counsel for the parties at length. Before going into the details of the arguments advanced by the learned advocates of both the sides, it would be worthwhile to take note of certain Clauses of the Government Resolutions as referred hereinabove. Clauses XIV and XV of GR dated 5-7-1991 issued by the Finance Department read as under :

"XIV - With the introduction of this Scheme, the present scheme of grant of senior scale after 17 years of service in respect of certain posts shall stand discontinued. The persons who have already drawn the senior scale will be entitled to the next higher grade scale on their satisfying the conditions mentioned at (iv) (vi) and (ix) above;

"XV - The employees who have already availed the benefit of senior scale if so desired can give option to continue in the senior scale or opt for this scheme. In case of option to come to this scheme, the pay fixation will be done as if he had not availed the benefit of senior scale."

7. Clause VIII of clarificatory/amended Resolution issued by the Government of Gujarat on 16-10-1993 reads as under:

(8)As per finance Department Resolution NO.AGP-1091-3-M-Para (15), if an employee receives senior scale for seventeen years service and if he/she gives 'option' for higher grade scale, the payment made for senior scale is to be deducted from its difference.

considered to be promotional, therefore, if a period of selection grade is covered in the senior scale at 17 years, the higher grade scale is admissible as per the rules on completion of 9, 18 and 27 years after granting selection grade.

In the case of an employee receiving first selection grade and then senior scale during the period of 9, 18 years prior to date 1-6-87, a provision of senior scale is made but what is about selection grade ?

If the period of selection grade is covered in the senior scale, compliance is to be done as per para (15) of the resolution dated 5/7/1991

8. Similarly eligibility for selection grade of trained primary teachers who are originally the petitioners are as under, as per the notification issued by the Education Department, Sachivalaya, Gandhinagar dated 16-9-1976 :

In the schedule appended to the said notification entry No. 3 appearing therein shall be deleted and the following entries shall be substituted :

Sr. No.	Designation	Present scale	Revised scale	Remarks
1.	2.	3.	4.	5.
3.	Trained Primary teachers (Selection grade)	Nil	Rs.400-15-490-EB-15-520-20-600.	(1) Selection grade will be awarded to those trained Primary teachers who have completed 15 years of service.
				(2) 20% of the total sanctioned posts of primary

teachers may
be awarded
selection grade.

By order and in the name of the Governor of Gujarat.

9. From the aforesaid Clause, it is abundantly clear that the option was given by the Government Resolution dated 5-7-1991 was between Senior Scale and Higher Grade Scale. The words "Selection Grade" were never used in Clause XV of GR dated 5-7-1991. Exclusion of Selection Grade form Clause XV of GR dated 5-7-1991 was dropped by issuing clarificatory/amended resolution dated 16-10-1993 as per Clause VIII thereof. Thus, Selection Grade has also been included in Clause XV of GR dated 5-7-1991. In our view, such type of inclusion so far as the original petitioners are concerned, is absolutely wrong and illegal on the part of the State Government. So far as aforesaid proposition is concerned, we are in full agreement with the reasons given by the learned Single Judge in the order dated 19-12-2001 in group of petitions and the order dated 24-11-2003 in the above review petitions especially keeping in mind :

(i) The words "Senior Scale" and "Selection Grade" are different connotation. Different were the criteria for getting Senior Scale and for getting Selection Grade and both cannot be equated with each other when the petitioners got the benefit of Selection Grade. Senior Scale can be obtained by Government employee who has completed certain number of years of service in the relevant scale. Whereas for getting Selection Grade, there were two criterias namely (a) Government employee must have completed 15 years of service and the same shall be given only to 20% of total sanctioned posts of primary teachers. Thus, second criteria includes the element of selection i.e. 20% of total sanctioned posts of primary teachers. If there are total 15 primary teachers, out of these, four primary teachers have completed 15 years of service then three (20% of 15 will be three) will get selection grade out of those teachers. Thus, selection is a criteria for getting selection grade, whereas in Senior Scale, seniority or length of service is the only criteria.

Primary teachers were given selection grade as under :

Case No. LPA filed by State & LPA filed by DPEO	Name of petitioner	Date of retirement	Selection Grade granted from
LPA No. 1070/2004 & 1077/04 in SCA No.8871/99 and MCA No.2147/03	Jugalkishore J. Patel	30-4-94	17-3-76
LPA No. 1071/2004 in SCA No.1093/00 & MCA No.2146/00	Bhaganbhai Shankarbhai Patel	30-4-94	17-3-1976
LPA No. 1072/04 & 1081/04 in SCA NO.2853/00 & MCA No.2148/03	Dalsinghbhai Bababhai Chaudhari	31-5-90	1-1-73
LPA No. 1073/2004 & 1080/04 in SCA No. 8872/99 & MCA No.2150/03	Shankarbhai Jivandas Gadhavi	31-12-92	w.e.f. 1-12-1974 by order dated 20-03-78

Thus, it is abundantly clear from the aforesaid bifurcation that the original petitioners were given Selection Grade in the years; 1973, 1974, 1976 & 1978. Government Resolution dated 16-9-1976 was amended by Government Resolution dated 2-12-1975 and the said resolution was also further amended on 26-12-1985.

(ii) The original petitioners have been given selection grade in the year 1973 or in the year 1976 or in the year 1978. Government Resolution dated 16-9-1976 has been amended subsequently on 26-12-1985 and the version of the said amended Government Resolution reads as under :

In the schedule appended to the said notification

for the entry at serial no.3, the following entry shall be substituted, namely :-

Sr. No.	Designation	Present scale	Revised scale	Remarks
1.	2.	3.	4.	5.
3.	Trained Primary teachers (Selection grade)	Nil	Rs.400-15-490-EB-15-520-20-600.	(1) revised scale in column 4 shall be admissible with effect from 1st July, 1983 to these trained teachers who have completed 17 years of continuous service on that date.
				(2)The revised scale in column no.4 shall also be admissible to every trained teacher on completion of 17 years of continuous service after 1st July,1983.
				3. The revised scale in column no.4 shall however be subject to the decision of Government to be taken on the recommenda-tion of Third Pay Commission

regarding the
scale for
trained primary
teachers.

By order and in the name of the Governor of Gujarat.

Thus, it is crystal clear that from 26-12-1985 all the trained primary teachers were entitled to get selection grade those who have completed 17 years of service and therefore on and from that date the words "Selection Grade" may be equated with the words "Senior Scale" as referred in GR dated 5-7-1991. Now onwards, for getting Selection Grade or Senior Scale, only seniority is to be seen or length of service of 17 years is to be seen. In the present case, the original petitioners were getting selection grade prior to 26-12-1985. At that time, criteria for getting Selection Grade was different. Therefore the words "Selection Grade" cannot be read in Clause - XV of GR dated 5-7-1991, so far as the original petitioners are concerned.

(iii) Clarificatory or amended notification dated 16-10-1993 which includes the words "Selection Grade" in Clause - XV of GR dated 5-7-1991 is not applicable to the present petitioners because the present petitioners were given benefit of Selection Grade as referred hereinabove in the year 1973 or in the year 1976 or in the year 1978.

(iv) It appears that the clarificatory or amended resolution dated 16-10-1993 especially Clause VIII thereof was required to be taken into consideration because on and from 26-10-1985 criteria for getting Selection Grade was altered and on and from 26-12-1985 trained primary teachers were entitled to get selection grade if they have completed 17 years of continuous service. Each and every such type of trained primary teacher who has completed 17 years of continuous service after 1-7-1983 were entitled to get selection grade and therefore on and from that date onwards selection grade becomes equal to senior scale and keeping in mind this aspect of the matter clarificatory or amended resolution dated 16-10-1993 has been issued. But so far as the original petitioners are concerned, they are getting their selection grade on the basis of

resolution dated 16-9-1976. At that time, the criteria for getting selection was different which has been incorporated hereinabove in the tabular form. Therefore, even if we hold that the Government has power, authority or jurisdiction to issue so called clarificatory or amended resolution dated 16-10-1993 especially Clause - VIII thereof, (which includes the words "Selection Grade" in Clause - XV of GR date 5-7-1991) the same shall not be applicable to the present petitioners because when they got their selection grade, the criteria was different as per GR dated 16-9-1976. Only vide resolution dated 26-12-1985 the criteria for getting selection grade was made purely on the basis of length of service of particular years rendered by the teachers or government employee which is akin to the criteria for getting Senior Scale. Therefore, even if the words "Senior Scale" is to be read in Clause - XV of GR dated 5-7-1991 (by amended or clarificatory GR dated 16-10-1993), the same is not applicable to the present petitioners.

(v) Some of the present petitioners have already retired from service and some of them retired before decade of years as referred hereinabove and selection grade was also granted to them before approximately 30 years and as referred hereinabove they got their selection grade on the basis of length of service as well as on the basis of selection as per the criteria for getting selection grade. At that time, the words "Selection Grade" was not equal to Senior Scale and therefore they were entitled to get Senior Scale or Higher Grade Scale. Clarificatory or amended resolution was issued by the State Government on 16-10-1993 especially Clause-VIII thereof is true and correct because the criteria for selection grade was altered vide resolution dated 26-12-1985 and was made purely on the basis of length of 17 years of continuous service. Therefore, rightly and correctly the Government included the words "Senior Scale" in Clause - XV of GR 5-7-1991. Those who have got selection grade on the basis of Government Resolution dated 16-9-1976, their cases are different because at that time the criteria for getting selection grade was not only on the basis of length of service but also selection. 20% of total sanctioned posts of primary teachers may be

awarded selection grade.

10. In view of the aforesaid reasons, we hold that the Government has every power, authority and jurisdiction to issue amended or clarificatory resolution dated 16-10-1993 and to that extent the impugned order passed by the learned Single Judge is hereby quashed and set aside. We also hold that the said amended/clarificatory Resolution dated 16-10-1993 whereby the words "Selection Grade" are to be included in Clause XV of GR dated 5-7-1991 is not applicable to the present original petitioners as they have already got their selection grade in the year 1973 or in the year 1976 or in the year 1979 because at that time the criteria for getting selection grade was different and was not purely on the basis of the length of service like words "Senior Scale" as used in Clause - XV of GR dated 5-7-1991.

11. In view of the aforesaid facts and circumstances and the material on record and considering the submissions made by the learned counsel for the parties and in view of interpretation of the different Government Resolutions referred hereinabove, aforesaid Letters Patent Appeals are partly allowed to the extent that the Government has all, power, authority and jurisdiction to issue clarificatory or amended resolution dated 16-10-1993 whereby the words "Selection Grade" can be read in Clause - XV of GR dated 5-7-1991. However, the said amended or clarification is not applicable to the present petitioners because the petitioners have already got benefit of selection grade on the basis of resolution dated 16-9-1976. The petitioners are entitled to benefit of selection grade as well as higher grade scale. Looking to the peculiar facts and circumstances of the case, since the petitioners have got their selection grade in the year 1973 or in the year 1976 or in the year 1979 on the basis of the resolution dated 16-9-1976 which is much prior to GR dated 26-12-1985.

12. For the foregoing reasons and discussion, aforesaid Letters Patent Appeals are partly allowed to the aforesaid extent. Appeals are allowed to the aforesaid extent. There shall be no order as to costs, in all the Letters Patent Appeals.

13. In view of the above order passed in the main

matters, aforesaid civil applications do not survive and hence the same stand disposed of.

(J.N. Bhatt, J.)

(D.N. Patel, J.)

_/\/Satwara/